IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

WONDA D. OSWALT   PLAINTIFF

V.   CIVIL ACTION NO. 1:13CV196-NBB-DAS

CAROLYN W. COLVIN,
ACTING COMMISSIONER
OF SOCIAL SECURITY   DEFENDANT

ORDER

This matter is before the court on plaintiff's motion (#15) and seeks an award of

attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412 ("EAJA"). Plaintiff

filed the present motion on the heels of the Commissioner's Unopposed Motion for Remand

Pursuant to Sentence Six (#12), which was granted by the district court judge assigned to this

case (#14). Since the district court judge remanded her case, plaintiff argues that she is entitled

to an EAJA award because: 1) she was the "prevailing party," and (2) the Commissioner's

position was not "substantially justified."

Under the EAJA, "[a] party seeking an award of fees and other expenses shall, within 30

days of *final judgment* in the action, submit to the court an application for fees and other

expenses…" 28 U.S.C. § 2412(d)(1)(B) (emphasis added). Unlike a sentence four remand,

sentence six remands do not become final until the Commissioner returns to court after the post-

remand proceedings. *Stewart v. Sullivan*, 1993 WL 309737, at *2 (5th Cir. 1993) (citing

Melkonyan v. Sullivan, 501 U.S. 89, 101-02 (1991)).

In the present case, the Commissioner filed an unopposed motion for a sentence six

remand because significant portions of the recording of the administrative hearing were

inaudible. On remand, the Administrative Law Judge will conduct a *de novo* hearing of

plaintiff's case. This hearing is currently scheduled for July of 2015. Because this case has not

yet reached a final judgment and is still in post-remand proceedings, plaintiff's motion for an

EAJA award is premature.

IT IS, THEREFORE, ORDERED THAT plaintiff's motion for attorney's fees under the

EAJA is hereby denied.

SO ORDERED this, the 17th day of June, 2015.

/s/ David A. Sanders
UNITED STATES MAGISTRATE JUDGE